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DEPARTMENT OF COMMERCE

International Trade Administration

[C-469-818]

Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of ripe olives from Spain. The period of investigation (POI) is January 1, 2016, through December 31, 2016.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Mary Kolberg or Lana Nigro, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1785, or (202) 482-1779, respectively.

## SUPPLEMENTARY INFORMATION:

### Background

On November 28, 2017, Commerce published the *Preliminary Determination* of this countervailing duty investigation, as provided by section 705 of the Tariff Act of 1930, as amended (the Act), in which Commerce found that countervailable subsidies are being provided to producers and exporters of ripe olives from Spain.<sup>1</sup> A summary of the events that have occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum which is hereby adopted by this notice.<sup>2</sup>

### Scope of the Investigation

The product covered by this investigation is ripe olives from Spain. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the preamble to Commerce's regulations,<sup>3</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope). No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice* during the scope comment period.<sup>4</sup> For the *Preliminary Determination*, Commerce did not modify the scope language as it appeared in the *Initiation Notice*. However, the issue of

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<sup>1</sup> See *Ripe Olives from Spain: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 56218 (November 28, 2017) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum) (collectively, *Preliminary Determination*).

<sup>2</sup> See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination for Ripe Olives from Spain," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>3</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>4</sup> See *Ripe Olives from Spain: Initiation of Countervailing Duty Investigation*, 82 FR 33050 (July 19, 2017) (*Initiation Notice*).

cocktail mixes arose in the context of the companion antidumping duty (AD) investigation on ripe olives from Spain. In the April 3, 2018, post-preliminary we issued with respect to the scope of the investigation, we found that: (i) ripe olives contained in cocktail mixes are in the scope, but that the remaining ingredients are not in the scope, and (ii) we clarified the scope by adding language concerning ripe olives contained in cocktail mixes.<sup>5</sup> As a result of our analysis of comments received in response to this post-preliminary analysis, we have modified the scope of this investigation for this final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Issues and Decision Memorandum.<sup>6</sup>

#### Methodology

Commerce is conducting this CVD investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, we determine that there is a subsidy (*i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient) and that the subsidy is specific. For a full description of the methodology underlying our final determination, *see* the Issues and Decisions Memorandum.

#### Verification

As provided in section 782(i) of the Act, in February and March 2018, we conducted verification of the information submitted by the European Commission, the Government of Spain, and the mandatory respondents Aceitunas Guadalquivir S.L. (AG), Agro Sevilla Aceitunas S.COOP.And. (Agro Sevilla) and Angel Camacho Alimentacion S.L. (Camacho) for

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<sup>5</sup> *See* Memorandum, “Ripe Olives from Spain: Post-Preliminary Scope Clarification Decision Memorandum,” dated April 3, 2018.

<sup>6</sup> *See* Issues and Decision Memorandum at Comment 30.

use in Commerce's final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.

#### Analysis of Comments Received

The subsidies programs under investigation and all issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

#### Adverse Facts Available

If necessary information is not available on the record, or an interested party withholds information, fails to provide requested information in a timely manner, significantly impedes a proceeding by not providing information, or information provided cannot be verified, Commerce will apply facts available, pursuant to section 776(a)(1) and (2) of the Act. For purposes of this final determination, Commerce relied, in part, on facts available and, because certain respondents did not cooperate by not acting to the best of their ability to respond to the Commerce's requests for information, we drew an adverse inference, where appropriate, in selecting from among the facts otherwise available.<sup>7</sup> A full discussion of our decision to rely on adverse facts available is

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<sup>7</sup> See sections 776(a) and (b) of the Act.

presented in the “Application of Facts Otherwise Available and Use of Adverse Inferences” section of the Issues and Decision Memorandum.

#### Changes Since the Preliminary Determination

Based on Commerce’s analysis of the comments received and its findings at verification, Commerce made certain changes to the subsidy rate calculations for AG, Agro Sevilla and Camacho.<sup>8</sup> In addition, Commerce revised the subsidy rate calculations for the respondents to reflect the reliance on partial facts available with an adverse inference pursuant to section 776(b) of the Act. Because of these changes to the estimated subsidy rate for each mandatory respondent we have also revised the subsidy rate applicable to all other producers and exporters (the all-others rate).

#### All-Others Rate

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an estimated subsidy rate for all exporters or producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those exporters and producers individually examined, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely under section 776 of the Act. In this investigation, we calculated individually estimated countervailable subsidy rates for AG, Agro Sevilla and Camacho, that are not zero, *de minimis*, or based entirely on facts otherwise available. Because there are three estimated subsidy rates available and doing so would not reveal business proprietary information, we calculated the all-others rate using a weighted-

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<sup>8</sup> See the “Discussion of the Issues” section of the Issues and Decision Memorandum and the company-specific analysis memoranda dated concurrently with, and hereby incorporated by, this notice.

average of the individually estimated subsidy rates calculated for the examined respondents using each respondent's business proprietary data for the merchandise under consideration.<sup>9</sup>

#### Final Determination

We determine that the following estimated countervailable subsidy rates exist:

<b>Exporter/Producer</b>	<b>Subsidy Rate</b>
Aceitunas Guadalquivir S.L. <sup>10</sup>	27.02%
Agro Sevilla Aceitunas S.COOP.And. <sup>11</sup>	7.52%
Angel Camacho Alimentacion S.L.	13.22%
All-Others	14.75%

#### Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

#### Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from Spain that were entered or withdrawn from warehouse, for consumption, on or after November 28, 2017, the date of publication of the

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<sup>9</sup> For a complete analysis of the data, see Memorandum, "Countervailing Duty Investigation of Ripe Olives from Spain: Calculation of the All-Others Calculation Rate for the Final Determination," dated concurrently with this notice.

<sup>10</sup> In the companion AD investigation, this company's name is spelled as Aceitunas Guadalquivir S.L.

<sup>11</sup> In the companion AD investigation, this company's name is spelled as Agro Sevilla Aceitunas S.Coop Andalusia.

*Preliminary Determination* in the Federal Register. In accordance with section 703(d) of the Act, effective March 28, 2018, we instructed CBP to discontinue the suspension of liquidation of all entries at that time, but to continue the suspension of liquidation of all entries between November 28, 2017, and March 27, 2018.

If the U.S. International Trade Commission (ITC) makes a final affirmative injury determination we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded or cancelled.

#### International Trade Commission Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b)(2)(B) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of ripe olives from Spain no later than 45 days after Commerce's final determination.

#### Notification to Interested Parties

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 705(d) and 777(i)(1) of the Act.

*Dated: June 11, 2018.*

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Gary Taverman,  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance.



## Appendix I

### Scope of the Investigation

The products covered by this investigation are certain processed olives, usually referred to as “ripe olives.” The subject merchandise includes all colors of olives; all shapes and sizes of olives, whether pitted or not pitted, and whether whole, sliced, chopped, minced, wedged, broken, or otherwise reduced in size; all types of packaging, whether for consumer (retail) or institutional (food service) sale, and whether canned or packaged in glass, metal, plastic, multilayered airtight containers (including pouches), or otherwise; and all manners of preparation and preservation, whether low acid or acidified, stuffed or not stuffed, with or without flavoring and/or saline solution, and including in ambient, refrigerated, or frozen conditions.

Included are all ripe olives grown, processed in whole or in part, or packaged in Spain. Subject merchandise includes ripe olives that have been further processed in Spain or a third country, including but not limited to curing, fermenting, rinsing, oxidizing, pitting, slicing, chopping, segmenting, wedging, stuffing, packaging, or heat treating, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in Spain.

Subject merchandise includes ripe olives that otherwise meet the definition above that are packaged together with non-subject products, where the smallest individual packaging unit (*e.g.*, can, pouch, jar, etc.) of any such product – regardless of whether the smallest unit of packaging is included in a larger packaging unit (*e.g.*, display case, etc.) – contains a majority (*i.e.*, more than 50 percent) of ripe olives by net drained weight. The scope does not include the non-subject components of such product.

Excluded from the scope are: (1) Specialty olives<sup>12</sup> (including “Spanish-style,” “Sicilian-style,” and other similar olives) that have been processed by fermentation only, or by being cured in an alkaline solution for not longer than 12 hours and subsequently fermented; and (2) provisionally

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<sup>12</sup> Some of the major types of specialty olives and their curing methods are:

- “Spanish-style” green olives: Spanish-style green olives have a mildly salty, slightly bitter taste, and are usually pitted and stuffed. This style of olive is primarily produced in Spain and can be made from various olive varieties. Most are stuffed with pimento; other popular stuffings are jalapeno, garlic, and cheese. The raw olives that are used to produce Spanish-style green olives are picked while they are unripe, after which they are submerged in an alkaline solution for typically less than a day to partially remove their bitterness, rinsed, and fermented in a strong salt brine, giving them their characteristic flavor.
- “Sicilian-style” green olives: Sicilian-style olives are large, firm green olives with a natural bitter and savory flavor. This style of olive is produced in small quantities in the United States using a Sevillano variety of olive and harvested green with a firm texture. Sicilian-style olives are processed using a brine-cured method, and undergo a full fermentation in a salt and lactic acid brine for 4 to 9 months. These olives may be sold whole unpitted, pitted, or stuffed.
- “Kalamata” olives: Kalamata olives are slightly curved in shape, tender in texture, and purple in color, and have a rich natural tangy and savory flavor. This style of olive is produced in Greece using a Kalamata variety olive. The olives are harvested after they are fully ripened on the tree, and typically use a brine-cured fermentation method over 4 to 9 months in a salt brine.
- Other specialty olives in a full range of colors, sizes, and origins, typically fermented in a salt brine for 3 months or more.

prepared olives unsuitable for immediate consumption (currently classifiable in subheading 0711.20 of the Harmonized Tariff Schedule of the United States (HTSUS)).

The merchandise subject to this investigation is currently classifiable under subheadings 2005.70.0230, 2005.70.0260, 2005.70.0430, 2005.70.0460, 2005.70.5030, 2005.70.5060, 2005.70.6020, 2005.70.6030, 2005.70.6050, 2005.70.6060, 2005.70.6070, 2005.70.7000, 2005.70.7510, 2005.70.7515, 2005.70.7520, and 2005.70.7525 HTSUS. Subject merchandise may also be imported under subheadings 2005.70.0600, 2005.70.0800, 2005.70.1200, 2005.70.1600, 2005.70.1800, 2005.70.2300, 2005.70.2510, 2005.70.2520, 2005.70.2530, 2005.70.2540, 2005.70.2550, 2005.70.2560, 2005.70.9100, 2005.70.9300, and 2005.70.9700. Although HTSUS subheadings are provided for convenience and US Customs purposes, they do not define the scope of the investigation; rather, the written description of the subject merchandise is dispositive.

## **Appendix II**

### **List of Topics Discussed in the Issues and Decision Memorandum**

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Scope Comments
- V. Subsidies Valuation
- VI. Loan Interest Rate Benchmarks and Discount Rates
- VII. Application of Facts Otherwise Available and Use of Adverse Inference
- VIII. Analysis of Programs
- IX. Discussion of the Issues
  - Comment 1: Whether Section 771B of the Act is Applicable in this Investigation
  - Comment 2: Whether a Pass-Through Analysis is Required
  - Comment 3: Whether the EU CAP Pillar I –BPS, SPS, and Greening Programs are Countervailable
  - Comment 4: Whether EU CAP Pillar II Agricultural Fund for Rural Development is Specific
  - Comment 5: Whether Commerce Should AFA to the Non-Cooperating Growers
  - Comment 6: Whether Commerce used the Correct Calculation Methodology to Measure Subsidies Received by the Respondents
  - Comment 7: Whether Commerce Should Remove Non-Growers and Adjust the Calculation of Benefits to Exclude the Olive Volume of Non-Producing Suppliers
  - Comment 8: Whether Commerce Should Apply AFA to Agro Sevilla Regarding Cross-Ownership with its First-Tier Suppliers
  - Comment 9: Whether Grant Funding Sourced from the ERDF is Regionally Specific
  - Comment 10: Whether the EU Sustainable Energy Development of Andalusia Scheme Program is Specific
  - Comment 11: Whether the PROSOL Program is Specific
  - Comment 12: Whether the EU Regional Development Fund and IDEA Program is Specific
  - Comment 13: Whether the EU Environment and Climate Action (LIFE) Program is Specific
  - Comment 14: Whether the SAIS Program is Specific
  - Comment 15: Whether Financing Sourced from the Spanish Official Credit Institute (ICO) is Countervailable
  - Comment 16: Whether Commerce Should Adjust the Interest Rate Used in Certain Long-Term ICO Financing to Angel Camacho
  - Comment 17: Whether Commerce Should Adjust the Calculation of European Investment Bank (EIB) Financing Received by Agro Sevilla
  - Comment 18: Whether to Apply AFA to the CDTI Program
  - Comment 19: Whether the CDTI Program is Export Specific
  - Comment 20: Whether Commerce Should Apply AFA to Angel Camacho's Unreported Grant Presented at Verification

- Comment 21: Whether Commerce Should Rely on “Unverified” Information
- Comment 22: Whether Commerce Should Adjust the Volume of Raw Olives Purchased to Account for Waste Loss
- Comment 23: Whether Commerce Should Accept Rejected Submission from the GOS and the Respondents
- Comment 24: Comments on the Verification Reports
- Comment 26: Whether Commerce’s Conduct in this Investigation Meets the Requirements of the ASCM
- Comment 26: Whether Other Discovered Subsidies Should be Included in this Investigation and Whether Other Assistance Can Form the Basis for Applying AFA
- Comment 27: Whether Commerce Should Include the Corrections of the Alleged Ministerial Errors
- Comment 28: Commerce Must Use Corrected and Revised Data in the Calculations
- Comment 29: Whether to Clarify the Scope of the Investigation to Include Ripe Olives Contained in Cocktail Mixes
- Comment 30: The Product to Which the Countervailing Duty Applies

X. Recommendation

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